IN THE UNITED STATES DISTRICT COURT

FOR THE DISTRICT OF HAWAII

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| SAMUEL ST. JAMES,<br><br>Plaintiff,<br><br>vs.<br><br>JP MORGAN CHASE BANK CORPORATION, ETC., ET AL.,<br><br>Defendants. | ) | CIVIL 16-00529 LEK-KSC |

**ORDER DENYING MOTION TO DISMISS [DKT. NO. 58] PLAINTIFF SAMUEL ST. JAMES'S SECOND AMENDED COMPLAINT**

On May 25, 2018, Defendants JPMorgan Chase Bank, N.A. ("JPMorgan"); Wells Fargo Bank, N.A. ("Wells Fargo"); California Reconveyance Company ("CRC"); and U.S. Bank National Association, as Trustee, Successor in Interest to Wachovia Bank, National Association, as Trustee, for Merrill Lynch Mortgage Investors Inc. Mortgage Pass-Through Certificates, Series MLMI 2005-A5 ("U.S. Bank," and all collectively "Moving Defendants"), filed their Motion to Dismiss [Dkt. No. 58] Plaintiff Samuel St. James's Second Amended Complaint ("Motion"). [Dkt. no. 65.] Plaintiff Samuel St. James ("Plaintiff") filed his memorandum in opposition on July 9, 2018, and the Moving Defendants filed their reply on September 17, 2018. [Dkt. nos. 67, 70.] On September 27, 2018, this Court issued an entering order finding the Motion suitable for disposition without a hearing, pursuant to Rule LR7.2(d) of the Local Rules of Practice for the United

States District Court for the District of Hawaii ("Local Rules"), and ruling that the Motion was denied. [Dkt. no. 72.] The instant Order supersedes that ruling. The Motion is hereby denied for the reasons set forth below.

## BACKGROUND

The factual and procedural background of this case is set forth in this Court's September 29, 2017 "Order Granting in Part and Denying in Part Defendants JP Morgan Chase Bank, N.A.; Wells Fargo Bank, N.A.; California Reconveyance Company; and U.S. Bank National Association's 'Motion to Dismiss [10] First Amended Complaint'; and Granting Defendant Deborah Brignac's 'Motion to Dismiss [ECF No. 10] First Amended Complaint Filed October 24, 2016'" ("9/29/17 Order"). [Dkt. no. 45.[1]]

Plaintiff filed his First Amended Complaint pro se. The 9/29/17 Order described this case as "aris[ing] from

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[1] The 9/29/17 Order is also available at 2017 WL 4392040. The First Amended Complaint and the 9/29/17 Order referred to JP Morgan Chase Bank, N.A. as "JP Morgan." See, e.g., First Amended Complaint at ¶ 2; 9/29/17 Order, 2017 WL 4392040, at *1. The Second Amended Complaint and the instant Motion refer to JPMorgan Chase Bank N.A., doing business as Chase Bank, as "JPMorgan." See, e.g., Second Amended Complaint at ¶ 3; Motion at 1. JP Morgan and JPMorgan refer to the same defendant.

The 9/29/17 Order referred to: (1) the Moving Defendants as the "Bank Defendants," and their motion to dismiss the First Amended Complaint, [filed 11/14/16 (dkt. no. 14),] as the "Bank Motion"; and (2) Defendant Deborah Brignac's ("Brignac") motion to dismiss the First Amended Complaint, [filed 2/24/17 (dkt. no. 32),] as the "Brignac Motion." 9/29/17 Order, 2017 WL 4392040, at *1.

Plaintiff's unsuccessful attempt to obtain a loan modification for the mortgage on his home in San Diego, California ('the Property') under the Home Affordable Modification Program ('HAMP')." 2017 WL 4392040, at *1.

The First Amended Complaint alleged the following claims: a fraud claim against the Bank Defendants, Brignac, and Washington Mutual Holding, Inc. ("WMHI")[2] based on misrepresentations in the loan modification process ("Count I"); [First Amended Complaint at ¶¶ 48-69;] a breach of contract claim against JP Morgan, based upon its alleged failure to comply with the HAMP three-month trial period plan ("TPP") agreement ("Count II"); [id. at ¶¶ 70-80;] a fraud claim against JP Morgan, Wells Fargo, and CRC based on misrepresentations in a case Plaintiff filed in a California federal court ("Count III"); [id. at ¶¶ 81-90;] an unclean hands claim against the Bank Defendants and Defendant Alaw[3] based on their alleged actions and omissions

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[2] According to the First Amended Complaint, Washington Mutual Bank, FSB ("WMB") reorganized in bankruptcy to WMHI in 2012. [First Amended Complaint at ¶ 10.] Although both WMHI and WMB were named as defendants in the First Amended Complaint, Plaintiff apparently did not complete service upon either entity, and they were not named as defendants in the Second Amended Complaint.

[3] Plaintiff identified Alaw as the "successor to, 'CRC', by purchase from" JP Morgan. [First Amended Complaint at ¶ 14.] The Second Amended Complaint includes Defendant Albertelli Law Partners, LLC, which Plaintiff refers to as "Alaw," see, e.g., Second Amended Complaint at ¶ 4, but the Court will refer to it as "Albertelli." There is no indication in the record that

(continued...)

during Plaintiff's bankruptcy proceedings in the District of Hawai`i ("Count IV"); [id. at ¶¶ 91-111;] violation of the California Unfair Competition Law, Business and Professions Code § 17200, *et seq.*, and other Hawai`i and California consumer protection laws, against the Bank Defendants and Alaw ("Count V"); [id. at ¶¶ 112-18;] a claim against the Bank Defendants seeking to set aside or vacate the sale of his home and to have title restored to him ("Count VI"); [id. at ¶¶ 119-26;] and intentional infliction of emotional distress against all of the defendants ("Count VII"), [id. at ¶¶ 127-42].

This Court granted the Bank Motion and the Brignac Motion insofar as the First Amended Complaint was dismissed for lack of jurisdiction. Because this Court concluded that it was possible for Plaintiff to cure the jurisdictional defect, this Court also addressed whether amendment of Plaintiff's claims would be futile because they were time-barred. 9/29/17 Order, 2017 WL 4392040, at *4. Specifically, this Court ruled as follows:

-California law applied to Counts I and III, and the claims could be amended to allege a basis for tolling of the statute of limitations; id. at *5-6;

-California law applied to Count II; id. at *5; and the dismissal of Count II had to be with prejudice because the claim was time-barred; id. at *7;

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[3] (...continued)
Plaintiff has completed service on Albertelli.

-Hawai`i law applied to Count IV; id. at *5; and the claim was not time-barred; id. at *8;

-Count V was "liberally construed to allege both that the challenged conduct which occurred in California violated California consumer protection laws and the challenged conduct which occurred in Hawai`i violated Hawai`i consumer protection laws"; id. at *5; Plaintiff's Haw. Rev. Stat. Chapter 480 claims would be timely if he cured the jurisdictional defect; id. at *8; and Plaintiff's Cal. Bus. & Prof. Code § 17200 claims could be amended to allege a basis for tolling of the statute of limitations; id.;

-California law applied to Count VI; id. at *5; and the claim could be amended to allege a basis for tolling of the statute of limitations; id. at *9; and

-California law applied to Count VII; id. at *5; and the claim could be amended to allege a factual basis for a ruing that the claim "did not accrue until [Plaintiff] knew or should have known that his emotional distress was caused by defendants' **outrageous** conduct," id. at *10 (emphasis in original).

This Court also dismissed Plaintiff's claims in Counts I and VII against Brignac – the only claims against her – with prejudice because, even if Plaintiff could cure the jurisdictional defect, he could not cure the substantive defects in his claims against her. Id. at *11. The Clerk's Office was directed to terminate Brignac as a party unless Plaintiff filed a motion for reconsideration of the 9/29/17 Order. Id. at *12. Plaintiff did not file a motion for reconsideration, and Brignac was terminated as a party on October 20, 2017.

Because Counts I and III through VII were dismissed without prejudice as to the Bank Defendants, Plaintiff was

allowed to file a motion seeking leave to file a second amended complaint. Id.

On January 8, 2018, Plaintiff's counsel filed his notice of appearance, and Plaintiff filed his Motion for Leave to File Second Amended Complaint ("Motion for Leave") on January 11, 2018. [Dkt. nos. 48, 49.] The magistrate judge orally granted the Motion for Leave at the hearing on the motion.[4] [Minutes, filed 2/26/18 (dkt. no. 57).] Plaintiff filed his Second Amended Complaint on March 5, 2018. [Dkt. no. 58.]

The Second Amended Complaint names JPMorgan, CRC, Albertelli, and U.S. Bank as defendants. [Id. at ¶¶ 3-5.] Although Wells Fargo is listed among the Moving Defendants, Wells Fargo is not named as a defendant in the Second Amended Complaint. See id. at ¶ 17 ("In October, 2008, Wachovia Bank merged into Wells Fargo Bank N.A."); id. at ¶ 5 (naming U.S. Bank as a defendant in its capacity as "successor in interest to Wachovia Bank, N.A. as trustee" ("Wachovia") (emphasis omitted)). All subsequent references to the "Moving Defendants" will refer to only JPMorgan, CRC, and U.S. Bank. The Moving Defendants and Albertelli will be referred to collectively as "Defendants."

Jurisdiction is based on diversity. [Id. at ¶ 7.] Plaintiff is a Hawai`i citizen; JPMorgan is a national

[4] On March 5, 2018, the magistrate judge filed a written order granting the Motion for Leave. [Dkt. no. 59.]

association with its main office in New York; U.S. Bank is a national association with its main office in Minnesota; Albertelli is a Florida limited liability company with its main office in Florida; and Plaintiff does not give citizenship information regarding CRC. [Id. at ¶¶ 1, 3-5.] However, there is nothing in the Second Amended Complaint which suggests that CRC may be considered a Hawai`i citizen for diversity purposes.

According to the Second Amended Complaint, on April 7, 2005, Plaintiff obtained a $417,000 loan from Washington Mutual Bank, FA ("WaMu"). In connection with the loan, he executed: a Fixed/Adjustable Rate Note ("Note"); and a Deed of Trust for the Property in favor of WaMu, with CRC as the trustee. The Deed of Trust gave CRC the power to sell the Property if Plaintiff committed a material default. [Id. at ¶¶ 9-12.] Plaintiff alleges that, on or about September 25, 2008, JPMorgan obtained the majority of WaMu's residential mortgage loans. [Id. at ¶ 16.] According to Plaintiff, however, WaMu's receiver did not assign Plaintiff's Deed of Trust to U.S. Bank until on or about March 19, 2013, and Albertelli purchased CRC's assets from JPMorgan in December 2013. [Id. at ¶¶ 27, 30.]

From February to May 2009, Plaintiff received letters from JPMorgan that advised him to apply for a loan modification, and Plaintiff entered into the TPP with JPMorgan, on or about September 17, 2009. Plaintiff alleges JPMorgan made false

representations about its interest in Plaintiff's loan and its authority to negotiate a loan modification during Plaintiff's application process and in connection with the TPP. In June 2010, JPMorgan informed Plaintiff he did not qualify for a permanent loan modification. [Id. at ¶¶ 18-21.]

On or about September 1, 2010, CRC recorded and sent Plaintiff a notice that his loan was in default and that it intended to sell the Property if he did not cure the default ("Trustee's Notice"). Plaintiff alleges the Trustee's Notice was wrongful because, at that time, it was Wachovia that held the Note and was the assignee of the Deed of Trust. [Id. at ¶¶ 22-23.] On September 10, 2010, Plaintiff filed a wrongful foreclosure action in a the United States District Court for the Southern District of California against, *inter alia*, JPMorgan and CRC ("California Case"). According to Plaintiff, during the California Case, JPMorgan falsely represented that it had a valid interest in Plaintiff's Note and mortgage. [Id. at ¶¶ 24-25.]

On January 30, 2013, Plaintiff filed Chapter 13 bankruptcy proceedings in the United States Bankruptcy Court for the District of Hawai`i ("Bankruptcy Case"). [Id. at ¶ 26.] Plaintiff alleges that, during the Bankruptcy Case, U.S. Bank falsely represented it was the holder of the Note and was the assignee of the Deed of Trust, and JPMorgan falsely represented that it was the loan servicer of Plaintiff's loan. [Id. at

¶¶ 28-29.] Plaintiff further alleges that, because of these false representations, JPMorgan and U.S. Bank (by and through CRC and/or Albertelli) obtained relief from the automatic bankruptcy stay in 2015 and were able to complete a nonjudicial foreclosure of the Property. [Id. at ¶ 31.] "After the foreclosure sale was completed, Plaintiff discovered there was a fatal break in the chain of title to the mortgage and that Defendants JPMorgan and U.S. Bank made material misrepresentations to the Bankruptcy Court as to their claimed interest in and to the Property." [Id. at ¶ 32.]

The Second Amended Complaint alleges the following claims: intentional and/or negligent misrepresentation against all Defendants ("Amended Count I"); intentional and/or negligent misrepresentation to the court against JPMorgan and U.S. Bank ("Amended Count II");[5] unclean hands against all Defendants ("Amended Count III"); a claim against all Defendants for breach of Cal. Bus. & Prof. Code § 17200 and Haw. Rev. Stat. Chapter 480 ("Amended Count IV"); wrongful foreclosure against all Defendants ("Amended Count V"); intentional and/or negligent infliction of emotional distress against all Defendants ("Amended Count VI"); slander of title against all Defendants ("Amended Count VII"); a

[5] The heading of Amended Count II states the claim is against WaMu and JPMorgan, but that appears to be a typographic error, because the text of Amended Count II refers to JPMorgan and U.S. Bank. [Second Amended Complaint at pgs. 9-10.]

declaratory judgment claim against all Defendants ("Amended Count VIII"); and a claim for an equitable lien against all Defendants ("Amended Count XI").

The instant Motion seeks dismissal, with prejudice, of all claims in the Second Amended Complaint. The Moving Defendants argue: 1) Plaintiff's claims are barred under the res judicata doctrine; and 2) it is not possible for Plaintiff to state any plausible claim for relief based on the theories asserted in the Second Amended Complaint, which were considered and rejected in the California Case and the Bankruptcy Case.

## DISCUSSION

### I. Materials Beyond the Pleadings

The Motion includes: the docket sheets for the California Case and the Bankruptcy Case; [Motion, Decl. of J. Blaine Rogers ("Rogers Decl."), Exhs. A & B;] Debtors Samuel St. James and Ma. Charito Cudillo St. James's objections to the motion for relief from the automatic stay, filed on July 17, 2013 in the Bankruptcy Case; [id., Exh. C;] the bankruptcy court's March 5, 2014 decision on Plaintiff's motion for a stay pending his appeal of the order granting relief from the automatic stay, and this Court's June 13, 2014 order dismissing Plaintiff's appeal for failure to prosecute; [id., Exhs. D & E;] Plaintiff's Note; [id., Exh. F;] and an affidavit, recorded on October 6, 2008 in the Town of West Hartford, regarding the acquisition of

assets by U.S. Bank from Wachovia, [id., Exh. G; Rogers Decl. at ¶ 9]. The Moving Defendants argue this Court should take judicial notice of Exhibits A, B, C, D, E, and G pursuant to Fed. R. Evid. 201(b)(2) and (c)(2). [Mem. in Supp. of Motion at 4 n.5, 12 n.7, 15 n.11.] Further, the Moving Defendants argue Exhibit F is incorporated by reference in the Second Amended Complaint. [Id. at 14 n.9.]

As a general rule, this Court's scope of review in considering a motion to dismiss is limited to the allegations in the complaint. See Daniels-Hall v. Nat'l Educ. Ass'n, 629 F.3d 992, 998 (9th Cir. 2010). "However, courts may 'consider certain materials – documents attached to the complaint, documents incorporated by reference in the complaint, or matters of judicial notice – without converting the motion to dismiss into a motion for summary judgment.'" Haw. Reg'l Council of Carpenters v. Yoshimura, Civ. No. 16-00198 ACK-KSC, 2016 WL 4745169, at *2 (D. Hawai`i Sept. 12, 2016) (quoting United States v. Ritchie, 342 F.3d 903, 908 (9th Cir. 2003)).

This Court "may take judicial notice of court filings and other matters of public record." Reyn's Pasta Bella, LLC v. Visa USA, Inc., 442 F.3d 741, 746 n.6 (9th Cir. 2006); see also Fed. R. Evid. 201(b) ("The court may judicially notice a fact that is not subject to reasonable dispute because it: . . . (2) can be accurately and readily determined from sources whose

accuracy cannot reasonably be questioned."). In considering a motion to dismiss, this Court will only consider the fact that certain documents were filed, not the contents of those documents. See, e.g., Hirota v. Gen. Nutrition Corp., CIVIL 15-00191 LEK-KSC, 2015 WL 6673688, at *2–3 (D. Hawai`i Oct. 29, 2015) (noting that this Court could take judicial notice of the docket in the plaintiffs' bankruptcy proceedings and the filing of specific documents, but converting the motion to dismiss into a motion for summary judgment because "it [was] necessary to consider the contents of the [plaintiffs'] filings in the Bankruptcy Court, not only the Bankruptcy Court's rulings or the fact that the [plaintiffs] filed certain documents").

The Moving Defendants' request for judicial notice of Exhibits A, B, C, D, E, and G is GRANTED, but this Court will only consider the fact that those documents – or, as to the docket sheets, the documents listed therein – were filed. This Court will not consider contents of those documents. Similarly, this Court can consider the Note (Exhibit F) because the Note is incorporated by reference in the Second Amended Complaint. See, e.g., Second Amended Complaint at ¶ 10. However, this is not dispositive of what entity controlled the Note at certain specific times relevant to Plaintiff's claims.

The Court's consideration of these exhibits does not convert the instant Motion into a motion for summary judgment.

See Yoshimura, 2016 WL 4745169, at *2. The Court now turns to the merits of the Motion.

**II. Law of the Case Doctrine**

Plaintiff argues that: the Moving Defendants raised the same arguments it now raises in the instant Motion in their opposition to Plaintiff's Motion for Leave; the magistrate judge rejected these arguments when he granted the Motion for Leave; and the magistrate judge's rulings constitute the law of the case and should not be revisited by this Court.

> "The law-of-the-case doctrine generally provides that 'when a court decides upon a rule of law, that decision should continue to govern the same issues in subsequent stages in the same case.'" Musacchio v. United States, --- U.S. ----, 136 S. Ct. 709, 716, 193 L. Ed. 2d 639 (2016) (quoting Pepper v. United States, 562 U.S. 476, 506, 131 S. Ct. 1229, 179 L. Ed. 2d 196 (2011)). The district court determined that it was "precluded" from reconsidering its order dismissing the original First Amendment claims in adjudicating the motion to dismiss the amended First Amendment claims, absent a showing that "1) the first decision was clearly erroneous; 2) an intervening change in the law has occurred; 3) the evidence on remand is substantially different; 4) other changed circumstances exist; or 5) a manifest injustice would otherwise result." United States v. Cuddy, 147 F.3d 1111, 1114 (9th Cir. 1998). . . .
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> **The law of the case doctrine does not preclude a court from reassessing its own legal rulings in the same case.** The doctrine applies most clearly where an issue has been decided by a higher court; in that case, the lower court is precluded from reconsidering the issue and abuses its discretion in doing so except in the limited circumstances the district court identified. See, e.g., Cuddy, 147 F.3d at 1114; United States v.

> Miller, 822 F.2d 828, 832 (9th Cir. 1987) ("The rule is that the mandate of an appeals court precludes the district court on remand from reconsidering matters which were either expressly or implicitly disposed of upon appeal."); United States v. Houser, 804 F.2d 565, 567 (9th Cir. 1986) ("The legal effect of the doctrine of the law of the case depends upon whether the earlier ruling was made by a trial court or an appellate court. . . . A trial court may **not**, however, reconsider a question decided by an appellate court.").

Askins v. U.S. Dep't of Homeland Sec., 899 F.3d 1035, 1042 (9th Cir. 2018) (some alterations in Askins) (some emphasis added). Thus, the law of the case doctrine does not preclude this Court from reassessing the magistrate judge's rulings on the arguments that were presented in both the opposition to the Motion for Leave and the instant Motion.

Moreover, this Court notes that the standard applicable to a court's consideration of a plaintiff's motion for leave to file an amended complaint is governed by Fed. R. Civ. P. 15(a)(2), which states, in pertinent part: "The court should freely give leave when justice so requires." This district court has stated:

> "This policy is 'to be applied with extreme liberality.'" Eminence Capital, LLC v. Aspeon, Inc., 316 F.3d 1048, 1051 (9th Cir. 2003) (citations omitted). The determination whether a party should be allowed to amend a pleading is left to the discretion of the court. Zenith Radio Corp. v. Hazeltine Research, Inc., 401 U.S. 321, 330 (1971) (citation omitted). If the facts or circumstances a plaintiff relies upon may be the basis of relief, she should be afforded an opportunity to test her claim on the merits.

> Foman v. Davis, 371 U.S. 178, 182 (1962). Furthermore, in exercising its discretion to grant leave to amend, a court "'should be guided by the underlying purpose of Rule 15(a) . . . which was to facilitate decisions on the merits, rather than on technicalities or pleadings.'" In re Morris, 363 F.3d 891, 894 (9th Cir. 2004) (quoting James v. Pliler, 269 F.3d 1124, 1126 (9th Cir. 2001)) (alteration in original).

Bald v. Wells Fargo Bank, N.A., CIVIL NO. 13-00135 SOM-KSC, 2017 WL 5617061, at *1 (D. Hawai`i Nov. 20, 2017). "[F]utility of the amendment" is one of the factors that can be considered in this analysis. Id. at *2 (citing Foman, 371 U.S. at 182; Morris, 363 F.3d at 894). However, even though futility may be considered, the Rule 15(a)(2) standard is far less stringent than the standard applicable to this Court's consideration of a motion to dismiss. See Ashcroft v. Iqbal, 556 U.S. 662, 678 (2009) ("To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" (quoting Bell Atlantic Corp. v. Twombly, 550 U.S. 544, 570 (2007))); id. ("A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." (citing Twombly, 550 U.S. at 556)).

This Court therefore rejects Plaintiff's argument that the law of the case doctrine precludes this Court from considering the arguments raised in the Motion.

**III. Res Judicata**

The Moving Defendants argue the res judicata effect of the California Case and the Bankruptcy Case preclude Plaintiff's claims in the instant case, in particular because Plaintiff is attempting to re-litigate the argument – which the bankruptcy court rejected in a final, appealable order – that U.S. Bank lacked standing to conduct the foreclosure.

The following standards apply to the issue of whether the judgment in the California Case has a res judicata effect:

> Federal courts are required to give full faith and credit to state court judgments under 28 U.S.C. § 1738. See San Remo Hotel, L.P. v. City & County of San Francisco, 545 U.S. 323, 125 S. Ct. 2491, 162 L. Ed. 2d 315 (2005). Generally "[u]nder res judicata, a final judgment on the merits of an action precludes the parties or their privies from relitigating issues that were or could have been raised in that action." Allen v. McCurry, 449 U.S. 90, 94, 101 S. Ct. 411, 66 L. Ed. 2d 308 (1980). To determine the preclusive effect of a state court judgment federal courts look to state law. Palomar Mobilehome Park Ass'n v. City of San Marcos, 989 F.2d 362, 364 (9th Cir. 1993). California's res judicata doctrine is based on a primary rights theory. The California Supreme Court explained that the primary rights theory:
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> > [P]rovides that a "cause of action" is comprised of a "primary right" of the plaintiff, a corresponding "primary duty" of the defendant, and a wrongful act by the defendant constituting a breach of that duty. The most salient characteristic of a primary right is that it is indivisible: the violation of a single primary right gives rise to but a single cause of action.

> Mycogen Corp. v. Monsanto Co., 28 Cal. 4th 888, 904, 123 Cal. Rptr. 2d 432, 443, 51 P.3d 297, 306 (2002) (citations omitted). A party may bring only one cause of action to vindicate a primary right. Id. at 897, 123 Cal. Rptr. 2d at 438, 51 P.3d at 302. Claims not raised in this single cause of action may not be raised at a later date. Id.

Manufactured Home Cmtys. Inc. v. City of San Jose, 420 F.3d 1022, 1031 (9th Cir. 2005) (alterations in Manufactured Home) (footnote omitted).

The Moving Defendants point out that the defendants in the California Case filed a motion to dismiss, which was granted on December 21, 2010. Plaintiff did not take an appeal in the California Case. [Mem. in Supp. of Motion at 3 (citing Rogers Decl., Exh. A (docket sheet for California Case, printed on 10/21/16)).] The district court in the California Case dismissed Plaintiff's Truth in Lending Act and Real Estate Settlement Procedure's Act claims with prejudice and dismissed Plaintiff's state law claims without prejudice. [Rogers Decl., Exh. A at dkt. no. 15 (entry for order granting motion to dismiss).] This Court cannot determine, based upon the docket sheet of the California Case, whether any of the claims Plaintiff now brings in the instant case constitute the same cause of action as claims brought in the California Case. See Mycogen Corp., 123 Cal. Rptr. 2d at 438. Therefore, to the extent the Motion seeks dismissal based on the res judicata effect of the judgment in the California Case, the Motion is denied.

The following standard applies to the issue of whether the judgment in the Bankruptcy Case has a res judicata effect:

> We steadfastly protect a litigant's right to his day in court. Once a sophisticated party has had a full and fair opportunity to be heard, however, we also recognize the merits of finality:
>
> > The doctrine of res judicata provides that 'a final judgment on the merits bars further claims by parties or their privies based on the same cause of action.' The application of this doctrine is 'central to the purpose for which civil courts have been established, the conclusive resolution of disputes within their jurisdiction.' Moreover, a rule precluding parties from the contestation of matters already fully and fairly litigated 'conserves judicial resources' and 'fosters reliance on judicial action by minimizing the possibility of inconsistent decisions.'
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> In re Schimmels, 127 F.3d 875, 881 (9th Cir. 1997) (quoting Montana v. United States, 440 U.S. 147, 153-54, 99 S. Ct. 970, 59 L. Ed. 2d 210 (1979)); see also Bell v. United States, 2002 WL 1987395, at *4 (E.D. Cal. 2002) ("The doctrine of res judicata is meant to protect parties against being harassed by repetitive actions."); Clements v. Airport Auth., 69 F.3d 321, 330 (9th Cir. 1995) ("Preclusion doctrine encompasses vindication of both public and private interests. The private values protected include shielding litigants from the burden of re-litigating identical issues with the same party, and vindicating private parties' interest in repose. The public interests served include avoiding inconsistent results and preserving judicial economy.").
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> Three elements constitute a successful res judicata defense. "Res judicata is applicable whenever there is (1) an identity of claims, (2) a final judgment on the merits, and (3) privity between parties." Stratosphere Litig. L.L.C. v. Grand Casinos, Inc., 298 F.3d 1137, 1143 n.3 (9th Cir. 2002) (citing Owens v. Kaiser Found. Health Plan, Inc., 244 F.3d 708, 713 (9th Cir. 2001)).

Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency, 322 F.3d 1064, 1077 (9th Cir. 2003) (footnote omitted). In order to accept the Moving Defendants' position that certain rulings in the Bankruptcy Action have a res judicata effect, this Court would be required to consider more than the mere fact that the court documents attached to the Motion were filed. This Court would have to consider the contents of those documents, as well as various representations purportedly made in the Bankruptcy Case. This would go beyond the scope of judicially noticed documents that are considered in ruling on a motion to dismiss. See Hirota, 2015 WL 6673688, at *2-3. This Court therefore concludes that it cannot determine the res judicata effect of the Bankruptcy Case based upon the limited record currently before this Court.

To the extent the Motion seeks dismissal of Plaintiff's claims based on the res judicata doctrine, the Motion is denied. However, the denial is without prejudice to the presentation of the res judicata issues in a motion for summary judgment.

**IV. Plausibility of Plaintiff's Claims**

The Moving Defendants' argument that the Second Amended Complaint fails to state any plausible claims for relief also asks this Court to consider the contents of documents filed, and representations made, in the prior proceedings. In ruling upon the instant Motion, this Court must accept all of the factual

allegations of the Second Amended Complaint as true, but it does not accept the legal conclusions pled within the factual allegations. See Iqbal, 556 U.S. at 678 ("Although for the purposes of a motion to dismiss we must take all of the factual allegations in the complaint as true, we 'are not bound to accept as true a legal conclusion couched as a factual allegation.'" (quoting Twombly, 550 U.S. at 555)). So construed, Plaintiff's Second Amended Complaint states sufficient factual allegations to support a reasonable inference that the Moving Defendants are liable for the misconduct alleged. See id. This Court therefore concludes Plaintiff's Second Amended Complaint alleges plausible claims for relief and denies the Motion. However, the denial of the Motion is without prejudice to the Moving Defendants' ability to raise similar arguments in a motion for summary judgment.

**CONCLUSION**

On the basis of the foregoing, JPMorgan, Wells Fargo, CRC, and U.S. Bank's Motion to Dismiss [Dkt. No. 58] Plaintiff Samuel St. James's Second Amended Complaint, filed May 25, 2018, is HEREBY DENIED. The Moving Defendants are ORDERED to file their answer to Plaintiff's Second Amended Complaint by **November 21, 2018**. If the Moving Defendants file a motion for reconsideration of the instant Order, it will not affect their deadline to file their answer. If necessary in light of any rulings on a motion for reconsideration, this Court will allow

the Moving Defendants to file an amended answer to the Second Amended Complaint.

The Clerk's Office is DIRECTED to terminate Defendants Washington Mutual Bank, FSB, Washington Mutual Holding Inc., and Wells Fargo Bank, N.A. because they are not named as parties in the Second Amended Complaint.

IT IS SO ORDERED.

DATED AT HONOLULU, HAWAII, October 31, 2018.

/s/ Leslie E. Kobayashi
Leslie E. Kobayashi
United States District Judge

**SAMUEL ST. JAMES VS. JP MORGAN CHASE BANK CORP., ET AL; CIVIL 16-00529 LEK-KSC; ORDER DENYING MOTION TO DISMISS [DKT. NO. 58] PLAINTIFF SAMUEL ST. JAMES'S SECOND AMENDED COMPLAINT**